

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

CORDOBA CORPORATION

CASE NO. 96-62330

Debtor

Chapter 11

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has before it the First Interim Fee Application of Coopers & Lybrand L.L.P. (“C&L”), accountants and financial advisors to Richard C. Breeden as trustee (“Trustee”), and the Cordoba Corporation as debtor-in-possession, which seeks payment of \$18,434 in fees and \$1,467 in disbursements. This fee application was filed on August 30, 1996 and scheduled for

a hearing on October 10, 1996. C&L agreed to adjourn the hearing until the fee auditor appointed in the related Bennett Funding Group bankruptcy completed its review of fee applications in those jointly administered cases.¹ At the October 10 hearing, however, the Court awarded C&L provisional fees and expenses on this application in the amounts of \$8,000 and \$500 respectively. The hearings on the fee applications were thereafter adjourned until January 9, 1997, and the Court reserved decision in order to fully examine those fee applications which were subject to review by the fee auditor as well as those which were not.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction over the parties and subject matter of this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (b)(2)(A) and (O).

FACTS

On May 29, 1996, the Trustee submitted an application on notice to employ C&L as financial advisor to the Trustee and the Cordoba Corporation as debtor-in-possession (“Cordoba”). A supplemental affidavit of Thomas E. Lumsden, dated June 14, 1996, was subsequently filed with the Court. A hearing on the application was held on June 20, 1996, and

¹ The Bennett Funding Group bankruptcy referred to above includes the following debtors: The Bennett Funding Group, Inc. (“BFG”), Bennett Receivables Corp. (“BRC”), Bennett Receivables Corp. II (“BRC-II”), and Bennett Management and Development Corp. (“BMDC”). For purposes of identification in this Decision, these debtors shall be referred to collectively as the “Initial Debtors.”

an order was thereafter submitted on July 9, 1996, which the Court signed the same day. C&L seeks payment of fees and expenses incurred as of May 15, 1996, the date Cordoba filed for bankruptcy relief, through July 15, 1996.

DISCUSSION

Code § 327(a) authorizes a trustee to employ one or more professionals, including attorneys and accountants, with the bankruptcy court's approval. 11 U.S.C. § 327(a). Authority for compensating such professionals is found in sections 330 and 331 of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code"), which permit the court to award reasonable compensation to a professional employed under Code § 327. Prior to any award of interim or final compensation however, a professional's employment must be formally approved by the bankruptcy court. This approval generally must occur before any compensable services are rendered to the estate. *See In re Rainbow Press of Fredonia*, 197 B.R. 428, 429 (Bankr. W.D.N.Y. 1996); *In re 245 Assocs., LLC*, 188 B.R. 743, 749 (Bankr. S.D.N.Y. 1995); *In re Sapolin Paints, Inc.*, 38 B.R. 807, 817 (Bankr. E.D.N.Y. 1984). This is true regardless of whether any pre-approval services were rendered in good faith and were beneficial to the estate. *See Sapolin*, 38 B.R. at 817.

Although C&L's employment in the Cordoba Corporation bankruptcy was only formally approved on July 9, 1996, the date the Order was signed, the Court shall authorize C&L's employment as of the date that the application seeking their employment was first filed with the Court, rather than on the date the Order was signed. Thus, C&L's employment is effective as of May 29, 1996.

According to the individual time records submitted, C&L billed \$15,012.50 in services beginning on May 29, 1996 which are specifically identified as pertaining to the Cordoba Corporation. In addition to these services, C&L's fee application includes a general category of work labeled "Bennett Bankruptcy." According to C&L, this category consists of services performed which could not be attributed to any particular family of debtors, and therefore C&L allocated a percentage of the total fees in this category among the different families of debtors.² Of the \$466,759.60 billed in this category, .73% of this amount, \$3,407.35,³ has been attributed to the Cordoba Corporation debtor.

Any issue regarding the rates charged by C&L as compared to rates charged by local accounting firms was addressed in the Decision relating to C&L's first interim fee application in the Initial Debtors' cases. The Court found that C&L's employment was sought based on the complexity and magnitude of these cases and the need for extensive resources to resolve the issues presented in an expedited fashion. Based on this, it would be unduly burdensome on the firm to accept the appointment to represent the estates at "local" market rates while still incurring

² For the purposes of allocation, C&L attributed certain percentages of the total fees billed in the general "Bennett Bankruptcy" category to the following families of debtors: Initial Debtors (composed of The Bennett Funding Group, Inc., Bennett Receivables Corp., Bennett Receivables Corp. II, and Bennett Management and Development Corp.), 76.83%; Aloha Debtors (composed of Aloha Capital Corp., American Marine International, Inc., Resort Services Co., Inc., and The Processing Center, Inc.), 22.43%; Cordoba Corporation, .73%.

³ Totaling the specific fees attributed to the Cordoba Corporation of \$15,012.50 and the allocated percentage of fees from the "Bennett Bankruptcy" category of \$3,407.35 yields the sum of \$18,419.85. This figure is slightly less than the \$18,434 in total fees requested by C&L in the fee application. This difference is the result of rounding off the allocable percentages. Carrying out the percentage attributable to Cordoba Corporation to the thousandths decimal place justifies the higher total requested of \$18,434, and thus this latter sum shall be used to compute the fees due.

the costs and overhead of its particular geographic market. Therefore, C&L shall not be required to accept local rates in seeking compensation for time spent benefitting the estates.

After reviewing the individual time records relating to the Cordoba Corporation and considering the disallowances made in prior related Decisions for the Initial Debtors and the Aloha Debtors which addressed non-compensable services in C&L's general "Bennett Bankruptcy" category, the Court finds that no additional deductions are warranted in this first interim fee application for the Cordoba Corporation. Likewise, the Court shall not disallow any portion of the requested expenses in this application. Therefore, the full amount of \$18,434 in fees and \$1,467 in expenses is granted on this first interim fee application.

Based on the foregoing, it is

ORDERED that the fees and expenses requested by C&L in its first interim fee application for the Cordoba Corporation debtor are allowed in the amount of \$18,434 in fees and \$1,467 in expenses; and it is

ORDERED that the allowed fees and expenses shall be reduced by the amounts of \$8,000 in fees and \$500 in expenses based upon the prior provisional award granted to C&L in this matter at the hearing on October 10, 1996; and it is further

ORDERED that payment of the allowed fees and expenses shall not be made from encumbered assets of this estate, if any.

Dated at Utica, New York

this 7th day of May 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge